CAMBRIDGE
UNIVERSITY PRESS

Muslim Women's Rights in the Global Village: Challenges and Opportunities

Author(s): Azizah Yahia al-Hibri

Source: *Journal of Law and Religion*, 2000 - 2001, Vol. 15, No. 1/2 (2000 - 2001), pp. 37-66

Published by: Cambridge University Press

Stable URL: https://www.jstor.org/stable/1051514

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at https://about.jstor.org/terms

Cambridge University Press is collaborating with JSTOR to digitize, preserve and extend access to *Journal of Law and Religion*

JSTOR

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

MUSLIM WOMEN'S RIGHTS IN THE GLOBAL VILLAGE: CHALLENGES AND OPPORTUNITIES

Azizah Yahia al-Hibri †

INTRODUCTION

In this age of information technology that shrank our world into a global village, it is fair to ask how this recent development has impacted Muslim women's rights across the world. Having just traveled through nine Muslim countries, ranging from Pakistan and Bangladesh to the Gulf States, Egypt, Syria, and Lebanon, I would answer that it is leading, slowly but surely, to reassessment and change.[1] Attempts to accelerate the pace of this change, however, without full understanding of its complex topology, and the deep-rooted commitment by most Muslim women to spiritual and cultural authenticity, could halt or even reverse this process at great cost to women particularly and Muslim societies as a whole. Hence the challenges and opportunities.

Pious Muslim women are generally bewildered by the laws and judicial systems of their societies, which are supposed to be Islamic. It is well understood that the hallmark of Islam is justice.[2] Yet Muslim societies have been dispensing injustices to women in the name of Islam. Some women seeking divorce in Islamic courts have been trapped within the system for years.[3] On the other hand, divorce and

---

† Fellow, National Humanities Center (2000-01). Professor of Law, University of Richmond. Presented for the Hannibal Club Event, September 28, 1999.

1. The trip was arranged and funded in part by the United States Information Service (USIA) and funded in part by the University of Richmond. The author thanks her student research assistants, Ms. Colleen Gillis and Ms. Ghada Qaisi, for blue-booking this article under immense time pressures. The author also thanks Ms. Linda Woolridge for proofreading it.

2. [Editor's Note: Translation of all Qur'anic cites herein were provided by the author who relied heavily on *The Meanings The Holy Qur'an* ('Abdullah Yusef 'Ali trans., Brentwood 1992).] *See* Qur'an 16:90, 49:9; Muhammad 'Amara, *Al-Islam wa Huquq al-Insan* 55-68 (Beirut: Dar al-Shuruq 1939) (arguing that justice leads all other values in Islam); *al-Mawsu'a al-Fiqhiyya* vol. 30, 5-14 (Kuwait: That al-Salasil, Ministry of Awqaf & Islamic Affairs 1983) (describing the different types of justice required in Islam and that Justice is one of God's names).

3. According to one woman, her divorce action had been pending in the courts for seven years. It had not reached its conclusion when we met. She was concerned about the loss of her reproductive years before the finalization of her divorce, thus dimming her chances for a remarriage and children.

This content downloaded from 71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

remarriage have been rendered much easier for men.[4] Also, various *Shari'ah* (Islamic law) protections for women in case of an unhappy marriage, divorce, or custody have been ignored even by the women's own families.[5] While Western feminists have been focusing on such issues as the veil and the perceived gender discrimination in the laws of inheritance, Muslim women I spoke to did not regard these issues as important. They were more interested in re-examining family law and in the proper application of all Islamic laws, including the laws of inheritance as they stand. In short, Muslim women want a more just understanding of and adherence to Islamic principles. They appear to believe that existing laws and practices are not conducive to a happy home life or a just society. Surprisingly, Muslim women have the support of many Muslim male jurists who share their concerns.[6]

Several factors have forced Muslims to reassess the status quo. The colonization experience, wars, Western education and Western modes of communication have been primary among these factors.[7] Colonization exposed the soft underbelly of the indigenous systems of governance, while at the same time challenging and marginalizing the Muslim individual's religious beliefs and cultural values.[8] Wars dislodged established social structures, especially those relating to the

4. Women in many countries complained about the ease with which a husband is allowed to divorce his wife. This trend contravenes a substantial body of traditional Islamic jurisprudence that offers important protections to the wife.

5. Some of these protections include the right of the woman not to be married without her consent, her right to a reasonable *sadaq* (financial or other gift given by the husband upon marriage), as well as her right to education and work. Other neglected protections include protection against abuse (even verbal abuse) and against interference by the husband in the wife's financial affairs.

6. Among recent jurists who were vocal in their support of women's rights generally, or in certain arenas, is the late Abdul Halim Abu Shuqqah, who wrote *Tahrir al-Mar'ah fi 'Asr al-Risalah*, 5 vols. (Kuwait: Dar al-Qalam 1990). Earlier this century, Muhammad Rashid Ridha also presented a Qur'anic interpretation which was more equitable towards women. *See e.g.* Muhammad Rashid Ridha, *Huquq al-Nisa' fi al-Islam* (Beirut: al-Maktab al-Islami repr. 1975) [hereinafter Ridha *Huquq*] Muhammad Rashid Ridha, *Tafsir al-Qur'an al-Hakim* (Beirut: Dar al-Ma'rifah 1947). *See also* a work by Sheikh Mahdi Shams al-Din, a contemporary jurist who argued for the woman's right to assume political power entitled *Ahliyyat al-Mar'ah li Tawalli al-Sultah* (Beirut: al-Mu'assasah al-Duwaliyyah li al-Dirasat wa al-Nashr 1995).

7. Some of these matters were discussed in Azizah Y. al-Hibri, *Islamic Law and Muslim Women in America*, in *One Nation Under God* 128-142 (Routledge 1999) [hereinafter al-Hibri, *Islamic Law*]; Azizah Y. al-Hibri, *Legal Reform: Reviving Human Rights in the Muslim World*, 20 Harv. Intl. Rev. 50 (1998) [hereinafter al-Hibri, *Legal Reform*]; Azizah Y. al-Hibri, *Islamic and American Constitutional Law: Borrowing Possibilities or A History of Borrowing?* 1 U. Pa. J. Const. L., 492-527 (1999) [hereinafter al-Hibri, *Constitutional Law*].

8. For more on this, see my discussion in Azizah Y. al-Hibri, *Islamic Law and Muslim Women in America*, in *One Nation Under God* 128, 134-135 (M. Garber & R. Walkowitz eds., Routledge 1999).

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

family.[9] Finally, through the twin lenses of Western education and modes of communication such as satellite television and the Internet, Muslim men and women are experiencing instantaneously, though vicariously, the post-colonial Western worldview and Western ways of life. Generally, they like a good part of what they see, such as democratic governance, freedom of speech, independent women, and comfortable technologically advanced societies. There are other things, however, they decidedly do not like, such as sexual permissiveness, the accelerating divorce rate, growing violence in society, especially among the youth, and the treatment of the elderly.

Consequently, many Muslims, male and female, are struggling today with the following questions: How do they introduce progress into their societies, while at the same time protecting their deep-seated spiritual beliefs and cultural identities, two valuable foundations that colonialism tried unsuccessfully to destroy? How can they benefit from the Western experience, including its recognition of the legitimate rights of women, without inadvertently destroying their highly valued familial ties? In this context, the experience of those North American Muslims who have successfully integrated their religious beliefs and ethnic heritage with the American and Canadian ways of life becomes very valuable. It is a living proof of the fact that Islam is not a mere "Oriental" religion, but a world religion which is capable of meeting the needs of Muslims in all historical eras and all geographical locations.

THE ROLE OF NORTH AMERICAN MUSLIMS

For this reason, beginning a discussion about Muslim women's rights in the Global Village by offering a North American Muslim perspective is neither irrelevant nor insignificant. In fact, my audiences in the various Muslim countries were very interested in my perspective. Once they recognized my serious spiritual commitment and jurisprudential knowledge of the topic, they wanted further information about women's rights in Islam.[10] There is, however, one drawback when a North American Muslim speaks. While non-American Muslim women and men may like my jurisprudential views on women's rights and welcome them, some may view them as exclusively suitable to the circumstances of North American Muslim women. On the other hand,

9. *Id.*

10. Many questions were asked (politely) to test my knowledge of Islam and Arabic, as well as to uncover my intentions. Once this test was passed, communication channels became wide open.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

others may be encouraged by them, perhaps as ushering in a new way of organizing their society which may conflict with some outmoded aspects of their culture but not with their religious beliefs. Such views would offer a fulcrum for change in the Muslim world.

For the sake of this second group, and for the sake of American and Canadian Muslims who have asked me repeatedly about Muslim women's rights, I shall focus in this article on those women's issues that are most important for the Muslim community. In drawing my conclusions, I shall rely mainly on basic and traditional Islamic sources to show that problematic jurisprudence was often the result of a misunderstanding or misapplication of the Qur'anic text resulting from cultural distortions or patriarchal bias. In preparation for this discussion, we need first to lay the foundation for understanding Islamic jurisprudence and its relation to culture.

THE RELATION OF RELIGION TO CULTURE

The distinction between (and relationship of) culture and religion is critical for understanding Islamic jurisprudence. Most importantly, the Qur'an is the revealed Word of God, whereas culture is human fabrication.[11] So, while a Muslim is bound by every letter, word and phrase in the Qur'an, she is not bound similarly by her cultural values. For example, a Muslim may reject a particular cultural custom or value, yet remain part of that culture. She cannot, however, reject even a single word in the Qur'an and continue calling herself a Muslim.[12] It is that simple and clear for Muslims. Consequently, cultural assumptions and values that masquerade as religious ones are insidious insofar as they mislead Muslims into believing that they have divine origins, thus denying Muslims the right to assess them critically, or even reject them. Some of the major misleading cultural assumptions relate to issues of democracy and women's rights.[13] The two issues incidentally are not

11. Muslims believe that the Qur'an is the Word of God revealed to the illiterate Prophet Muhammad through the Archangel Gabriel. For more on this and a quick description of Islamic law, *see* Azizah Y. al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 Case W. Res. J. Intl. L. 1, 3-10 (1992) [hereinafter al-Hibri, *Islamic Constitutionalism*].

12. It may be argued that exceptions arise in situations where jurists interpret a verse of the Qur'an as having been superceded by a later verse (or *hadith*, according to some). The general rule, however, remains. In one famous incident, the Sudanese Mahmoud Taha was executed for arguing that a substantial part of the Qur'an should be abrogated because it had become, in his view, obsolete. While the decision to execute was a political one made by former President al-Numeiri, it was disguised as a religious one. The justification used reflects the universal view held by Muslims, namely that rejecting any part of the Qur'an is tantamount to rejecting Islam.

13. Al-Hibri, *Islamic Constitutionalism, supra* n. 11; Azizah Y. al-Hibri, *Islam, Law and Custom: Redefining Muslim Women's Rights*, 12 Am. J. Intl. L. & Policy (1997) [hereinafter al-

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

unrelated.

Cultural assumptions and customs have often been introduced legitimately into the Islamic legal system. The Qur'an celebrates ethnic, racial and other forms of diversity; and the *hadith* (reported words of the Prophet) emphasizes the equality of all human beings.[14] For this reason, jurists have encouraged various cultures to retain their cultural identity by including their customs in their legal systems.[15] The only condition for such inclusion was that these customs be consistent with the basic tenets of Islam itself.[16] In case of inconsistency, the cultural customs must be rejected.[17] This approach permitted a variety of Islamic civilizations to blossom, each with its own cultural heritage but all sharing the same basic religious law. Unfortunately, however, some customs that conflicted with Islamic tenets increasingly found their way into the laws of various Muslim countries.[18] Even today, many countries that claim to be following Islamic law often use religion to justify repugnant laws that are really based on custom.[19] Because such

---

Hibri, *Islam*].

14. *See* Qur'an 4:1, 6:98, 7:189; *Khutbat al-Wadaa'* by the Prophet, in which he stated:

> O People, all believers are siblings. Your God is one and your father is one. You are all from Adam and Adam is from dust. The most favored amongst you in the sight of God is the one who is most pious; no Arab is favored over a non-Arab except on the basis of piety.

Hassan Ibrahim Hassan, *Tarikh al-Islam* vol. 1, 186 (7th ed., Cairo: Maktabat al-Nahda al-Misriyyah 1964) (also recounting that some Muslims objected to the fact that the Prophet gave his permission for a free woman to marry a slave, and that the Qur'anic verse 49:13 was revealed on this occasion). For a translation of the full text of verse 49:13; *see infra* n. 94.

15. *See* Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* 283-296 (1991); Subhi Mahmassani, *Al-Awda' al-Tashri'iyyah fi al-Duwal al-'Arabiyyah* 438-442, 479, 481 (3d ed., Beirut: Dar al-'Ilm li al-Malayin 1965) [hereinafter Mahmassani, *Al-Awda'*]; al-Hibri, *Islam*, *supra* n. 13, at 6-7; Ali Haidar, *Durr al-Hukkam fi Sharh Majallat al-Ahkam* vol. 1, 40-46 (Beirut: Dar al-Kutub al-'Ilmiyyah n.d.) (explaining the importance of acknowledging and defining the role of custom in Ottoman law, and quoting the *hadith* that what Muslims deem to be good, is good in the sight of God); Subhi Mahmassani, *Muqaddimah fi 'Ihya' 'Ulum al-Shari'ah* 59-93 (Beirut: Dar al-'Ilm li al-Malayin 1962) [hereinafter Mahmassani, *Muqaddimah*] (noting, among other things, that the permission to change a law as a result of change in time or place relates only to matters of *mu'amalat*, that is, dealings among people, and does not apply to Qur'anic text or to *'ibadat*, that is, matters of worship).

16. *See* Haidar, *supra* n. 15, at vol. 1, 40; Kamali, *supra* n. 15, at 284; Mahmassani, *al-Awda'*, *supra* n. 15, at 438-439; al-Hibri, *Islam*, *supra* n. 13, at 61.

17. *See* Haidar, *supra* n. 15, at vol. 1, 40; Kamali, *supra* n. 15, at 284; Mahmassani, *al-Awda'*, *supra* n. 15, at 438-440 (but noting that some Muslim countries have given preference in their modern laws to custom over *shari'ah*); al-Hibri, *Islam*, *supra* n. 13, at 6.

18. For an excellent discussion of this point, *see* Mahmassani, *al-Awda'*, *supra* n. 15, at 433-475.

19. A good example of this is Pakistan's *zina* (adultery) laws. For an excellent discussion of these laws which are claimed to be based on Islam, *see* Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective*, 18 Mich. J. Intl. L. 287 (1997).

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

justifications are offered in Muslim societies whose religious education has most likely suffered in the last century, Muslims are often unable to discern the cultural roots of objectionable laws and their conflict with Islam.[20] As a result, devout Muslims hesitate to criticize any part of the law. In other words, confusion as to the religious character of some laws has effectively resulted in silencing important critical voices and keeping society bound by repugnant customs mistaken for religious injunctions.

It is furthermore important to understand that Islamic laws as they relate to *mu'amalat* (dealings among people) often reflect differences of jurisprudential opinion among major Muslim scholars.[21] These differences have many roots.[22] Allowing custom into the legal system is only one of them.[23] Another root derives from the right to freedom of conscience, which is guaranteed in the Qur'an itself.[24] For this reason, it is established in traditional Islamic jurisprudence that scholars have the right to engage in their own *ijtihad* (jurisprudential interpretation) to develop laws that are best suited to their jurisdiction and era.[25] That *ijtihad* is then reflected in the legal system of the country.[26] Unfortunately, however, several factors have combined throughout history to narrow the scope of *ijtihad* and limit freedom of thought.[27] As a result, many schools of thought disappeared and no new ones replaced

20. I came face to face with this problem while on a USIA tour. In a closed meeting with some leading Muslim women, it became clear that several of them were chafing under certain patriarchal laws in their country but were unwilling to contest them because they thought these laws were based on the Qur'an.

21. The most obvious instance of this fact is reflected in the Muslim family law of the various countries. For a detailed discussion, *see* al-Hibri, *Islam*, *supra* n. 13, at 10-14; Azizah Y. al-Hibri, *Marriage Laws in Muslim Countries*, 4 Intl. Rev. Comp. Pub. Policies 227, 229-241 *passim* (1992).

22. *See* Mahmassani, *Muqaddimah*, *supra* n. 15, at 35-55; al-Hibri, *Constitutional Law*, *supra* n. 7, at 506, 509.

23. For a discussion of the various considerations that could lead to differences of opinion and thus different formulations of the law, *see* Kamali, *supra* n. 15, at 197-228, 245-309 *passim*; Mahmassani, *al-Awda'*, *supra* n. 15, at 478-482; al-Hibri, *Constitutional Law*, *supra* n. 7, at 505-511.

24. Qur'an 2:256.

25. *See* Mahmassani, *Muqaddimah*, *supra* n. 15, at 67. The most salient example of this fact is that of Imam al-Shafi'i, who changed aspects of his jurisprudence after he moved from Iraq to Egypt. *See id.* at 40; Taha Jabir al-'Alwani, *Usul al-Fiqh al-Islami* (The Foundations of Islamic Jurisprudence) 33-36 (Intl. Inst. of Islamic Thought 1990); Muhammad Abu Zahrah, *Al-Shafi'i* 145-146 (n.p.: Dar al-Fikr al-'Arabi 1948); 'Ala' Al-Deen al-Samarqandi, *Tariqat al-Khilaf bayn al-Aslaf* (The Method of Disagreement Among the Predecessors) 13 (Beirut: Dar al-Kutub al-'Ilmiyyah, 11th Cent. repr. 1992).

26. *See supra* n. 19.

27. *Mahmassani al-Awda'*, *supra* n. 15, at 477-478; al-Hibri, *Islam, supra* n. 13, at 7; al-Hibri, *Legal Reform, supra* n. 7, at 50-53.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

them.[28] Furthermore, scholars continued to adhere to established schools of thought even when these were no longer best suited to their societies.[29] Only recently, for example, did Morocco revise its personal status code to eliminate a provision allowing the father to force his *bikr* (virgin) daughter into marriage.[30] The provision derived from the Maliki tradition and represented an obsolete cultural interpretation of the parental relationship, yet it remained as part of the law for a very long time.[31] A closer look at the Maliki interpretation would have revealed its inconsistency with the *hadith* that requires the consent (or permission) of a *bikr* for the validity of her marriage.[32] Such inconsistencies were often overlooked by earlier jurists who were caught up in their own cultural perspectives. As these perspectives become outmoded, it becomes important to expose and eliminate them.

It is not possible, however, to critically assess Islamic law without a proper Islamic education. Politics, unfortunately, has played a major role in denying the average Muslim a good religious education.[33] This denial, in part a colonialist legacy, helped political regimes confuse the masses about what is in the Qur'an or what the Qur'an actually says.[34] Such confusion did critical damage in areas of Islamic law relating to issues of governance and democracy. Recognizing their responsibility towards God and Muslims, jurists made repeated attempts to clarify Islamic law on these matters,[35] as they struggled to keep political

28. Mahmassani, *Muqaddimah*, *supra* n. 15, at 20-22, 39; Al-Hibri, *Constitutional Law*, *supra* n. 7, at 522-523.

29. Muhammad Abu Zahrah, *Al-Ahwal al-Shakhsiyyah* 9 (n.p.: Dar al-Fikr al-'Arabi 1997) (arguing that Hanafi law is no longer suitable in some respects for modern times). Only recently did Morocco abandon the Maliki rule that a father may force his virgin daughter into marriage against her will. *See* al-Hibri, *Islam*, *supra* n. 13, at 11, 15 (stating that other Muslim jurists disagreed with Malik on this matter). Also, some countries continue to have in effect laws based on a jurisprudence that assumes that women can be easily swept by emotions and hence need the protection of men. *See id.* at 15.

30. Moroccan Code, *infra* n. 83, Royal Decree No. 193347, bk. 1, tit. 3, ch. 12 (1993) (deleting old bk. 1, tit. 3, ch. 12(4) & revising old bk. 1, tit. 3, ch. 12(1)-12(3)).

31. Al-Hibri, *Islam*, *supra* n. 13, at 14-15.

32. *See* Abu al-Hussein Bin Muslim, *Sahih Muslim bi Sharh al-Nawawi* vol. 9, 202-205 (9th Cent., repr., n.p.: Dar Ihya' at-Turath al-'Arabi n.d.) [hereinafter *Sahih Muslim*] (quoting the Prophet as saying that a virgin may not become married without her permission).

33. *See* al-Hibri, Islamic *Law*, *supra* n. 7, at 129; al-Hibri, *Constitutional* Law, *supra* n. 7, at 522-523. *See also* Abu Hamid al-Ghazali, *Ihya' 'Ulum al-Din* 33-34 (Matba'at Mustafa al-Babi al-Halabi 1939); 'Abd al-Rahman Ibn Khaldoun, *al-Muqqadimah* 209 (14th Cent., repr., Kitab al-Qalam 1978); Ibrahim al-Wazir, *'Ala Masharif al-Qarn al-Khamis 'Ashar al-Hijri* 42 (Beirut: Dar al-Shuruq 1989); Hassan al-Zein, *al-Islam wa al-Fikr al-Mu'asser* 45-46 (Dar al-Fikr al-Hadith 1997). *Cf.* al-Ghazali, *supra*, at vol. 2, 337-351 (providing instances where people who spoke out to the ruler directly were not punished).

34. *See* al-Hibri, *Islamic Law*, *supra* n. 7, at 134-135.

35. Most significant among the recent attempts are the works of Abd al-Razzaq al-Sanhuri,

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

influence out of the mosque.[36] But authoritarian rulers quashed these efforts and punished those leaders who stood in their way.[37] Islamic history is littered with stories of the torture or jailing of various highly distinguished jurists whose crime was that of refusing to echo the views of the political ruler and shroud them with religious legitimacy.[38] This state of affairs continues until this day, a fact which does not bode well for freedom of thought or belief in these countries. How can Muslim women begin discussing their rights when Muslim men and women cannot even speak freely?

BASIC INTRODUCTION TO ISLAM

To understand Islamic law, one must start with the basic principles of Islam. The primary source of all Islamic law is the Qur'an. It is supplemented by the *hadith*. Other important sources are those of *ijma'* (consensus) and *ijtihad* which is based on rules of logic as well as on religious text.[39] It is important to note that Islam has no clergy, nor does it have an ecclesiastic structure.[40] Each individual has direct access to the Qur'an and *hadith* and is in principle entitled to engage in *ijtihad*, so long as she has the requisite knowledge.[41] Thus not only countries but also individuals are entitled to their own jurisprudential choices.

This fundamental right of Muslims to freedom of jurisprudential choice and to unmediated access to the Qur'an and *hadith*, combined with Islam's respect for local custom makes it clear that North American Muslims are not bound by the cultural preferences of Muslims in other countries nor by their jurisprudential choices. We live in and are part of North American cultures that also celebrate diversity. We are free to retain from our ethnic heritage these elements that continue to be viable and useful in our new society. But we are fully bound by our religious

---

Fiqh al-Khilafah Wa Tatawwuruha (Cairo: al-Hay'a al-Masriyyah al-'Ammah li al-Kitab 1989) (argues that the Islamic system of government is quite similar to the system of government in the United States). *See* Tawfic al-Shawi, *Fiqh al-Shurah* (Dar al-Wafa' 1992).

36. Today, Muslim governments often appoint the Grand Mufti (highest ranking Islamic authority in the state), as well as imams of mosques. Some governments even limit or specify the topics imams may address on Fridays, when Muslims congregate to pray.

37. The most famous example is that of the great jurist Imam Malik who was tortured by the ruler for refusing to mislead Muslims about the fact that coerced consent was not binding upon them. *See* a reference to this incident and others in al-Wazir, *supra* n. 30, at 42. Another example is discussed in al-Hibri, *Constitutional Law*, *supra* n. 7, at 520-522 (recounting the story of Yazid, one of the Khalifahs who attempted to gain legitimacy by the use of force).

38. *See supra* n. 33.

39. For a comprehensive study of this topic *see* Kamali, *supra* n. 15.

40. *See* al-Hibri, *Constitutional Law*, *supra*, n. 11, at 507-511; al-Hibri, *supra*, n. 9, at 24-25. For this reason, a Mufti, grand or otherwise, may not bind others by his opinion (*fatwa*).

41. *See supra* n. 40.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

beliefs. We cannot be selective among them. We are entitled, however, to interpret Divine Will in ways that are best suited for our own jurisdiction and era. Of course, such interpretations do not apply to the *thawabit* of Islam, i.e. to matters that are fixed, clear, and fundamental, such as the unicity of God.

The fact that our governments espouse democratic principles and do not stifle our freedom of expression facilitates our efforts. North American Muslims are free to engage vigorously in the time-honored tradition of *ijtihad* in order to authentically define their own jurisprudence. Unlike their brothers and sisters abroad, they do not have to be concerned about either political censorship or retribution.

In the matter of Muslim women's rights, North American Muslim women are not bound by the patriarchal assumptions of other cultures. These assumptions have been rejected for the most part in our societies. We are only bound by the Qur'an, as illuminated by reliable *hadith* and what it says about women and their rights. Furthermore, in discovering what the Qur'an says we are not bound by the patriarchal aspects of interpretations offered by earlier jurists. These aspects reveal themselves as patriarchal when the jurist incorporates into his logic patriarchal assumptions not present in the Qur'anic verse itself, such as the assumption that women are emotional and irrational.[42]

In the United States and Canada, many of our Muslim women are capable professionals whose mere existence presents a counterexample to these patriarchal assumptions. Many Muslim women in other countries have made similar gains, but are being hindered in their progress by patriarchal forces in the name of Islam.[43] They are also being hindered from rebutting patriarchal claims by an authoritarian structure of governance. For example, every Afghani man and woman I spoke to during my travels is fully aware that getting an education is the duty of each Muslim male and female. Yet, the Taliban forces have managed to impose a minimalist interpretation and a patriarchal educational policy through sheer force.

Because of the various obstacles facing Muslim women abroad, they tend to be quite supportive of the serious efforts by North American Muslim women to rid Islamic law of patriarchal cultural influences. In the rest of this article, I shall present my views on Islamic law as it relates to various issues of importance to women. These views are all

42. *See supra* n. 29.

43. The most salient example is the situation in Afghanistan. In the name of Islam, professional Muslim women have been prevented from working outside their homes, and their daughters have been denied an education as good as theirs, a very painful situation to the mothers.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

based on the Qur'an itself; they also rely in part on the *hadith* and on traditional juristic sources.

THE QUR'ANIC VIEW OF WOMEN

Basic Equality

As an American Muslim woman unburdened by patriarchal assumptions, I have a distinct advantage over earlier interpreters when I study the Qur'an: I can read it with fresh, liberated eyes. Reading the Qur'an, I discover that it has only one creation story. The Qur'an states repeatedly, for emphasis, that both the male and the female were created from the same *nafs*.[44] Consequently, there is no human hierarchy, and the two genders share a single origin. In the Qur'an, the fall of Adam is not blamed on Eve.[45] Rather, both were tempted by Satan and sinned in the pursuit of power and eternal life.[46] Furthermore, God forgave humanity after the fall. There is no continuing burden of the original sin.[47] Men and women are responsible towards God for their own mortal choices. They are both judged by the same standards; they also have the same rights, duties, and obligations in matters of *ibadat* (worship).[48] There are some differences between them in the realm of *mu'amalat* (dealings), which regulates civil matters.[49] These will be addressed later. In short, a Muslim woman is as complete a spiritual being as the male. She is as entitled as he is to read and interpret the Qur'an and to live a full pious life.

Legal and Financial Rights

In the realm of *mu'amalat*, the Muslim woman is an independent legal entity, not lost through marriage. A Muslim woman retains her

44. *See* Qur'an 4:1, 6:98, 7:189.

45. *See* Qur'an 7: 20-22 (stating that Satan succeeded in tempting both Adam and Eve to taste the fruit of the tree of eternity and power), 20:120-121 (stating that Satan tempted Adam, so both Adam and Eve ate the fruit of the tree).

46. *See supra* n. 45.

47. *See* Qur'an 20:122.

48. *See* Zaidan 'Abd al-Baqi, *Al-Mar'ah Bayn al-Din wa al-Mujtama'* 194-199 (Cairo: n.p. 1977); Ridha, *Huquq*, *supra* n. 6, at 5-37; 'Abd al-Karim Zaidan, *Al-Mufassal fi Ahkam al-Mar'ah wa al-Bayt al-Muslim* vol. 4, 173-186, especially 184 (Beirut: Mu'assasat al-Risalah 1994) (arguing that the rule in Islam is the equality of the two genders but listing and explaining exceptions in the area of *mu'amalat*, i.e., dealings).

49. *See* 'Abd al-Baqi, *supra* n. 48, at 196-199; Ridha, *Huquq*, *supra* n. 6, at 20-22; Zaidan, *supra* n. 48, at vol. 4, 184-186.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

own name after marriage.[50] She also retains her financial independence.[51] She can own property in her own right whether she is married or single, and no one, not even her husband, may access her funds or properties, or demand any form of financial support from her.[52] Any money or property of her own that the wife gives her husband, even if she is richer than he, is regarded as a loan unless she expressly specifies otherwise.[53] Islamic law, however, differentiates between the financial rights and obligations of the two genders. The male, while also financially independent has additional financial responsibilities. He must support the women in his family regardless of their financial condition, unless there is a financially able male relative who is closer to them.[54] For example, a father is responsible for the support of his daughter, regardless of her age, but if the woman marries, that responsibility is transferred to her husband.[55] The logic of these differences in obligations may lie in the fact that the Qur'an is simply providing women with added security in a difficult patriarchal world. Put into today's legal language, the Qur'an engages in affirmative action with respect to women.

Right to Sadaq

The Qur'an also gives the woman additional opportunities to accumulate wealth. For example, upon marriage she has the right to

50. This practice remains common is Saudi Arabia and some Gulf countries, but has become less common is other Muslim countries that are subject to Western influences.

51. *See* Ridha, *Huquq*, *supra* n. 6, at 19-20; Zaidan, *supra* n. 48, at vol. 4, 291-297, & at vol. 7, 334-343 (concluding that while the Muslim woman is free to spend her money as she wishes, it would be desirable for her to seek her husband's permission before she gives away her money in order to preserve good relations with him).

52. *See supra* n. 51.

53. *See* Mahmassani, *Muqaddimhah*, *supra* n. 15, at 496-497 (stating that a husband is obliged to support his rich wife, but that she may not be forced to spend any of her money on him); al-Jaziri, *Kitab al-Fiqh 'ala al-Mathahib al-Arba'a* vol. 4, 563, 582, 584 (Beirut: Dar Ihya' al-Turath al-'Arabi 1969) (stating *inter alia* that if a husband is unable to maintain his wife, any amounts she spends from her own money for her maintenance (*nafaqah*) becomes a debt of the husband, even if she is wealthy); Zaidan, *supra* n. 48, at vol. 4, 290-291, 297. Additionally, once the husband gives his wife her *nafaqah* (maintenance payments) for food or clothing, for example, she is free to spend the money as she likes and not necessarily on food or clothing, so long as she does not harm or weaken her health or detract from her appropriate dress, *see* Zaidan, *supra* n. 48, at vol. 7, 214-215.

54. *See* Abu Zahrah, *supra* n. 29, at 415-416 (explaining the rules for determining which male is required to provide maintenance to a woman); al-Jaziri, *supra* n. 53, at vol. 4, 553, 581 and n. 1 (stating that when the husband is unable to support his wife, the duty falls upon certain other males in her and his family, in accordance with a specified order).

55. *See* Abu Zahrah, *supra* n. 29, at 246 (stating that the well-to-do father of a married woman, who is not receiving maintenance from her spouse, may be obligated to maintain her, but the expense becomes a debt of the husband); Zaidan, *supra* n. 48, at vol. 4, 151.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

expect a gift from her husband which could range from teaching her a few verses from the Qur'an (if she does not know them already) to a few silver coins to an immense fortune, depending on the parties' mutual agreement.[56] This is referred to as the *sadaq* or *mahr* of the woman, sometimes erroneously described as "bride price."[57] The *sadaq* signifies the willingness of the man to undertake the responsibilities of marriage. The woman has the option of asking for the full amount of the *sadaq* (or designated property) in advance, or of deferring part of it to become due at a specified later time, or upon such event as death or divorce.[58] In the case of death, *sadaq* becomes a senior debt of the deceased husband's estate to be satisfied ahead of all other debts.[59] Therefore, the *sadaq* is at times more valuable than the wife's inheritance from her husband when the estate is overburdened by debt.

In the case of divorce, the *sadaq* offers the woman a clearly defined property or amount of money she could rely upon after the divorce, without need for further negotiations. Whereas some rich women tend to settle for a symbolic *sadaq*, many women view it as their security net in case of death or divorce. Some women may prefer to take the full amount of the *sadaq* at the outset. In that event, these women are free to invest the amount of the *sadaq* in any venture they choose. They may start a business with it or even give it to charity. The husband may not touch it or any profit resulting from it.[60]

Of course, patriarchal reality in Muslim countries is quite different from the Islamic one. Today, many fathers negotiate the amount or type of *sadaq* on behalf of their daughters. In some cultures, it is a sign of prestige for the family to settle for a symbolic *sadaq* regardless of the financial interest of the daughter. In these cases, many fathers do not adequately protect their daughters' interests.[61] In other cultures where a substantial *sadaq* may be at stake, the father may appropriate the *sadaq* from his daughter to cover wedding expenses (which are customarily his responsibility). If he does not, the husband may "borrow" it from the wife after marriage. More commonly, some cultures pressure the wife

56. Abu Zahrah, *supra* n. 29, at 175; al-Jaziri, *supra* n. 53, at vol. 4, 96-107; Mahmassani, *al-Awda'*, *supra* n. 15, at 467, 494; Zaidan, *supra* n. 48, at vol. 7, 69.

57. *See* Keith Hodkinson, *Muslim Family Law: A Source Book* 132 (London: Croom Helm 1984); Mahmassani, *al-Awda'*, *supra* n. 15, at 467-468.

58. *See* Abu Zahrah, *supra* n. 29, at 174; al-Jaziri, *supra* n. 53, at vol. 4, 153-156.

59. *See* Abu Zahrah, *supra* n. 29, at 174; Zaidan, *supra* n. 48, at vol. 7, 90.

60. *See* Ridha, *Huquq*, *supra* n. 6, at 19-20; Mahmassani, *al-Awda'*, *supra* n. 15, at 476; Zaidan, *supra* n. 48, at vol. 4, 291-297.

61. Many marriage contracts tend to waive financial and other protections of the wife. These contracts are usually negotiated by the wife's father or other close male relative.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

to "waive" the deferred part of her *sadaq* altogether as a gesture of good will towards the husband.[62] In all these cultures, the woman has become highly vulnerable financially and has lost a good measure of her God-given independence.

Right to Work

There are other ways, however, in which the Muslim woman can accumulate wealth. For example, she can work. The Qur'an states that men and women have a right to their earnings.[63] Khadijah, the first wife of the Prophet, was a business woman and continues to serve to this day as a lofty ideal for Muslim women.[64] Again, until recently patriarchal laws prohibited women from entering the work field under the guise of protecting women's morality or because of women's perceived physical limitations.[65] New economic realities have set in, however, and now many personal status codes in Muslim countries no longer prohibit women from working.

Right to Inheritance

Another source of wealth available to the Muslim woman is her inheritance. Islam guarantees for the woman a share in her relatives' inheritance specified on the basis of her degree of kinship to the deceased.[66] The false view in the West is that Islam gives a female a share in the inheritance equal to half that given to a male. The Qur'an does specify that a *sister* inherits half of the amount her *brother* inherits, but also specifies that other females of different degrees of kinship may inherit more than other males.[67]

Nevertheless, given the Qur'anic specification, it appears that the male sibling inherits double the amount inherited by his sister, but there is one important difference between her inheritance and his. The

62. I heard about these scenarios during my various trips to Muslim countries. The women who mentioned them had been divorced and left penniless.

63. *See* Qur'an 4:32.

64. Ibn Hisham, *Al-Sirah al-Nabawiyyah* (The Biography of the Prophet) v. 1, 187-188 (Beirut: Al-Maktabah al-'Ilmiyyah n.d.); Hassan, *supra* n. 14, at 76; Akram Dia' al-'Umari, *Al-Sirah al-Nabawiyyah Al-Sahihah* (The Authentic Biography of the Prophet) 112-114 (al-Madinah, Saudi Arabia: Maktabat al-'Ulum wa al-Hikam 1994).

65. *See* al-Hibri, *Islamic Constitutionalism supra* n. 11, at 12. For a detailed discussion of the right of Muslim women to work, *see* Farida Bennani, *Taqsim al-'Amal Bayn al-Zawjain fi Daw' al-Qanun al-Maghribi wa al-Fiqh al-Islami* 77-78, 155-169 (Marrakesh L. Sch. 1993).

66. *See* Muhammad Abu Zahrah, *Ahkam al-Tarikat wa al-Mawarith* 100-150 (Dar al-Fikr al-'Arabi 1963); Ridha, *Huquq*, *supra* n. 6, at 20-21; Zaidan, *supra* n. 48, at vol. 11, 261-311.

67. *See* Qur'an 4:11.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

amount inherited by the sister is a *net* amount added to her wealth.[68] The amount inherited by the brother is a *gross* amount from which he will have to deduct the expenses of supporting the various women, elderly men and children in his family, one of whom may be the sister herself.[69] As mentioned earlier, even if the sister is wealthy, she is not required to support herself. Her closest male relative has that obligation, which she may waive only if she so chooses. Consequently, the net increase in the wealth of the brother is often less than that of his sister.

These facts illustrate what Muslim scholars have known all along, namely, that inheritance laws in Islam are quite complicated and cannot be reduced to a single slogan. Patriarchy, however, has simplified the inheritance picture drastically. Many Muslim women receive no share of their inheritance at all. Some are forced by their own families to turn their inheritance over to their brothers. Worse yet, many brothers take the inheritance and disappear from the lives of their sisters who have no closer male relative obligated to support them or capable of doing so. Historically, Muslim courts prosecuted such behavior and compelled the brother to support the sister. Today, many injustices go unnoticed, and the balance of rights and obligations in the Muslim family has been severely upset.

THE QUR'ANIC VIEW OF GENDER RELATIONSHIPS

Basic Principles

The Qur'an states clearly and repeatedly that human beings were all created from the same *nafs*.[70] Furthermore, it states that God created for us humans from our own *nafs* mates with whom we could find tranquility.[71] Elsewhere, the Qur'an describes the marital relationship as one characterized by tranquility, mercy, and affection.[72] In fact, the husband and wife are each other's "garments," that is they protect each other's privacy and cover each other's shortcomings.[73] This view has important consequences in various areas of gender relations which will be briefly addressed below.

---

68. This is a consequence of the rules of maintenance mentioned earlier. Women have no duty to maintain themselves or others, while related males are obligated to support them. *See supra* n. 53 & accompanying text.

69. *Id.*

70. *See* Qur'an 4:1, 6:98, 7:189

71. *See* Qur'an 7:189, 30:21.

72. *See* Qur'an 30:21.

73. *See* Qur'an 2:187.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

Nevertheless, it is often argued that the superiority of men over women was asserted in the Qur'an itself.[74] The main verse used in this argument is the one which refers to men as "*qawwamun*" over women. The word "*qawwamun*" is a complicated old word, rich with meanings. One translation of the meaning of this verse states: "Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means."[75]

The term "*qawwamun*" in the Qur'anic verse was translated above as "*protectors and maintainers*," but traditional patriarchal interpreters (and the average Muslim man) understood the word "*qawwamun*" to refer to the superiority of men over women (mostly by virtue of their physical strength, as suggested by the above translation). Ancient Arabic dictionaries, however, include among the meanings of "*qawwamun*" those of guiding and advising.[76] These meanings are more consistent with the general Qur'anic view of gender relations than the ones preferred by male jurists.

Properly translated, the verse recognizes a male's *qiwamah* over a woman *only if* he (1) is supporting her financially, *and* (2) has been favored by God in certain aspects over her that are relevant (at that time) to the woman's concerns about which he is providing advice and guidance.[77] (An example of the aspects referred to in the second requirement would be business acumen, in a situation where the woman is not herself at that time a knowledgeable business woman, or physical strength, where that particular woman needs at that time physical assistance.) Otherwise, the male cannot assert his *qiwamah*, whether it is advisory or not. Yet, that one verse has become the hallmark of patriarchal bias, since it has been interpreted to mean that all men are superior to all women at all times. As some scholars explained, men are always in a more favorable position vis-a-vis women because of their physical strength.[78] Furthermore by restricting the woman to the home, society insured that women will almost always need to be supported and advised by some male. This point of view has encouraged oppressive

74. The author has replaced the Arabic word "Allah" in the translation which follows with its English meaning, namely, God. This was done to emphasis the fact that 'Allah" is the same God as that of Christianity and Judaism.

75. Ali, *supra* n. 2, v. 4:34.

76. See my discussion of this point in *Islam, Law and Custom*, 12 American U. J. of Intl Law & Policy 1, 28 (1997).

77. A detailed discussion of this verse, including the conditional and temporal *(zarfiyyah)* aspects implicit in it, appears in al-Hibri, *Islam*, *supra* n. 13, at 25-34.

78. *Id.* at 28-30.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

males to move away from the Islamic ideal of marital relationships.

Housework

Because of the Qur'anic view of marital relationships, scholars viewed the marriage contract as a contract for companionship and not as a service contract.[79] As a result, they stated that the woman is not required to clean, cook or serve in her house.[80] If she does these things, then she is viewed as a volunteer.[81] Otherwise, the husband is obligated to bring her prepared food and take care of the house.[82]

Despite these facts, in many Islamic cultures today the home is viewed as the wife's realm, and she is viewed as responsible for taking care of it and for raising the children. In fact, the Moroccan personal status code states explicitly that one of the wife's duties is the duty to "supervise" the household and manage it.[83] In many families, this means that the wife is required by law to do the housework since she cannot afford house-help. This is contrary to the juristic views mentioned above.

Motherhood

The Qur'an views pregnancy as an arduous experience.[84] Perhaps partially for this reason, Muslim jurists do not obligate the mother to nurse her baby, except as a last resort.[85] Children are raised by both parents who consult each other on important matters.[86] This fact is of course not surprising in light of the Qur'anic view of ideal marital relations. Furthermore, when the Prophet was asked by a Muslim as to whom should the latter honor most, the Prophet answered: "Your

79. *See* Abu Zahrah, *supra* n. 29, at 166 (stating that while some jurists disagreed, the major jurists Abu Hanifah, Malik and al-Shafi'i have all stated that the marriage contract was for marital companionship and not for service benefits); Bennani, *supra* n. 65, at 143-144 (mentioning this view as one of three differing positions among jurists).

80. *See supra* n. 79.

81. *See* Bennani, *supra* n. 65, at 143-144; Zaidan, *supra* n. 48, at vol. 7, 302.

82. *See supra* n. 81.

83. Moroccan Code, Royal Decree No. 343.57.1 (1957), as amended by Royal Decree No. 347.93.1 bk. 1, tit. 6, ch. 36(4) (1993) [hereinafter Moroccan Code].

84. Qur'an 46:15.

85. Zaidan, *supra* n. 48, at vol. 9, 475-480 (stating that Hanafi's, Shafi'is and Hanbalis, with minor qualifications, do not require the mother to nurse the child. Malikis do, unless the wife is from an upper class!).

86. Qur'an 2:233 (parents consult about weaning their child); Abu Shuqqah, *supra* n. 6, at vol. 5, 104-109 (providing examples in support of the thesis that spouses consult each other in the Muslim family).

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

mother."[87] The questioner then asked: "Whom should I honor most next?" The Prophet repeated the same answer. Three times did the Prophet repeat "You mother," and only on the fourth time did he say "Your father."[88] He also stated that paradise is under the feet of mothers.[89]

Despite this surprisingly modernistic view of maternal obligations, in today's Muslim societies Muslim women are obligated by social pressure if not by law to nurse their children and be the primary caretakers. Not only is this obligation contrary to tradition, but it also often affects the human development of mothers, especially with respect to education and career. Yet many men continue to emphasize the fact that mother's milk has special health benefits and that her care in the early years is crucial to the child's emotional well being. Assuming that the thesis is correct, it is not clear that either the nurse or the caregiver has to be the mother. A wet nurse would impart similar benefits. Wet nurses are readily available in many countries, but are rarely used these days because of social pressures. Yet, the Prophet himself was nursed by a wet nurse.[90] Furthermore, well-to-do families of Makkah had a tradition of sending their children to live for several years in the desert in order to teach them better Arabic and expose them to cleaner air.[91] As a child, the Prophet himself was sent away from the city of Makkah into the desert to live with his wet nurse.[92] He never criticized that practice. Actually, he had warm memories of the woman who raised him.[93] These facts open the door to many scenarios of child rearing that can accommodate the special needs of both the mother and the child without unduly burdening either.

87. Abu Abdullah I. al-Bukhari, *Sahih al-Bukhari bi Hashiat al-Sindi* vol. 4, 47 (9th Cent. repr., Beirut: Dar al-Ma'rifah n.d.) [hereinafter *Sahih al-Bukhari*]; *Sahih Muslim*, *supra* n. 32, at vol. 16, 102.

88. *See supra* n. 87.

89. Ibn Majah, *Sunan Ibn Majah* vol. 2, 930 (9th Cent. repr., Beirut: Dar al-Kutub al-'Ilmiyyah n.d.) [hereinafter *Ibn Majah*]; Abu 'Abd al-Rahman al-Nasa'i, *Sunan al-Nasa'i bi Sharh al-Suyuti Wa Hashiat al-Imam al-Sindi* vol. 6, 11 (Beirut: Dar al-Kutub al-'Ilmiyyah n.d.) [hereinafter *Sunan al-Nasa'i*].

90. Ibn Hisham, *supra* n. 64, at 160-176 (stating also that the Prophet often mentioned this fact as part of his identity); Al-'Umari, *supra* n. 64, at 102-103.

91. Ibn Hisham, *supra* n. 64, at 162-163, n. 9.

92. *See supra* n. 90. The Prophet was returned to his mother when he was about five years old. Al-'Umari, *supra* n. 64, at 105 (noting also that reports varied as to the prophet's age upon his return, ranging between four and six); Hassan, *supra* n. 14, at 75.

93. *See supra* n. 90. Islam recognizes children who nurse from the same wet nurse as "milk siblings." This recognition results in duties and obligations. For example, milk siblings must inquire after each other, and may not marry each other. The Prophet inquired after his wet nurse. Ibn Hisham, *supra* n. 64, at vol. 1, 161, n. 6 (also listing the names of the Prophet's milk siblings).

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

Clearly then the problem in Muslim societies is not Islam but the existing cultures. Many of these cultures continue to subscribe to *jahiliyyah* (pre-Islamic) values prohibited by Islam. The continued adherence to cultural values rejected by the Qur'an is best exemplified in the area of ethnic and racial differences as these relate to marriage.

Marriage and Ethnic Differences

Not only does the Qur'an teach that all humans were created from the same *nafs*, but it also teaches that human ethnic and racial differences were purposely created by God so that we would (have an impetus to) get to know each other (enjoy each other's company).[94] The Qur'an adds, however, that the closest to God in God's sight are those who are most pious.[95] In other words, diversity is a divine blessing, which we should celebrate rather than fear or loathe. Furthermore, God judges us solely in terms of our piety, not the color of our skin.

Still some schools of thought continue to require that a prospective husband be of the same ethnic background and social status as the prospective wife, that his profession, financial status, and lineage be suitable to hers or else the father may prevent or void the marriage.[96]

The Structure of the Family

Some personal status codes in Muslim countries designate the husband as the head of the household, require the wife to obey him, or both.[97] It used to be in Egypt that if the wife left her marital home, the police could return her to "the house of obedience" by order of the

---

94. Qur'an 49:13. The translation of the full text of this verse is as follows:
O people, we have created you from a single (pair) of male and female, and made you into nations and tribes, so that you may know each other (not that you may despise each other). Verily, the most honored of you in the sight of God is the one who is the most pious among you. God has full knowledge and is well-acquainted (with all things).

95. *Id.*

96. For a discussion of this point, *see* al-Hibri, *Marriage Laws in Muslim Countries*, *supra* n. 21, at 231-232; al-Jaziri, *supra* n. 53, at vol. 4, 54-60; al-Hibri, *Islam, supra* n. 13, at 16, n. 74 (recounting the story of Sheikh Yusuf Ali, a distinguished Egyptian journalist of poor origins, whose marriage earlier this century to Safiyya al-Sadat, an aristocratic woman, was annulled for lack of eligibility).

97. Moroccan Code bk. 1, tit. 6, ch. 36, art. 36 (requiring obedience); Tunisian Code, Personal Status Code Decree bk. 1, art. 6 (Aug. 13, 1956 as amend. 1993) bk. 1, old art. 23 (repealed 1993) [hereinafter Tunisian Code] (stating that the husband is the head of the family); Algerian Code, Family Law No. 84-11 (1984) bk. 1, tit. 1, ch. 4, art. 39 [hereinafter Algerian Code] (requiring obedience and stating that the husband is the head of the family). *See also infra* n. 99. For a discussion of the concept *ta'ah* (obedience), *see* al-Hibri, *Islam, supra* n. 13, at 18-21.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

court.[98] While the forced return to the house is now gone, the concept of obedience remains the centerpiece of the code.[99] For example, if the wife "disobeys," she may be denied maintenance.[100] That is a serious matter for financially vulnerable individuals.

Conclusion

In short, patriarchal bias inherited by Muslims from their cultures survived the clear injunctions of the Qur'an to the contrary. It prevented interpreters from seeing the simple truths of the Qur'an and seriously delayed the advent of the ideal Muslim family and society. Of course, these biases do not surprise our Creator. The Qur'an in fact takes into account the depth of the entrenchment of certain cultural beliefs and customs by adopting a philosophy of gradualism with respect to social change. Therefore, to understand the Qur'an properly, we need to understand its underlying philosophy of gradual change.

THE QUR'ANIC PHILOSOPHY OF CHANGE

Basic Rationale

The Qur'anic philosophy of gradualism is predicated upon the fact that fundamental changes in human consciousness do not usually occur overnight.[101] Instead, they require a period of individual or even social

98. For a discussion of the concept of *bayt al-ta'ah* (house of obedience) and its legal operation, *see* Ashraf Mustafa Kamal, *Qawanin al-Ahwal al-Shakhsiyyah* passim, especially 148 *et seq.* (Cairo: Naqabat al-Muhamin 1990); Mu'awwab Abdul Nawwab, *Al-Wasit* 175 *et seq.* (Cairo: 'Alam al-Kitab 1982).

99. For the existence of the concept of *ta'ah* in the personal status codes of various Muslim countries *see, e.g.* Algerian Code, bk 1, tit. 1, ch. 4, art. 39; Egyptian Code, Act No. 25 (1920) (in respect of Maintenance and Some Questions of Personal Status) & Act No. 25 (1929) (regarding certain Personal Status Provisions) as both are amended by Act No. 100 (1985) [collectively, hereinafter Egyptian Code], Law No. 25, ch. 2, art. 11 Repeated Twice (1929) (amend. 1985); Jordanian Code, Personal Status Code, Provisional L. No. 61, ch. 7, art. 39 (1976) [hereinafter Jordanian Code]; Kuwaiti Code, pt. 1, bk. 1, tit. 5, ch. 3, arts. 84-91 (1984) [hereinafter Kuwaiti Code]; Moroccan Code, bk. 1, tit. 6, ch. 36, art. 2 (1993); Syrian Code, Decree No. 59 (1953) (regarding Personal Status Law) amended by L. No. 34, bk. 1, tit. 4, ch. 3, art. 75 (1975) [hereinafter Syrian Code], by implication and generally as a result of the doctrine of incorporation. The Tunisian Code bk. 1, art. 6 no longer requires obedience by the wife. Some of these provisions only partially address the *ta'ah* requirement simply because the Codes make use of the doctrine of incorporation which allows the law to fall back on the officially chosen school of jurisprudence for guidance in instances where the law is silent.

100. *Supra* n. 99, Egyptian Code L. No. 25 ch. 1 art. 1 (1929) (amend. 1985) (the wife loses her right to maintenance if she refuses to have conjugal relations with her husband or leaves her home without her husband's permission (unless she has a legitimate reason for leaving)).

101. For a discussion of the Qur'anic philosophy of gradualism, *see* al-Hibri, *Islamic*

This content downloaded from 71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

gestation. For this reason, the Qur'an uses a gradual approach to change entrenched customs, beliefs, and practices, except in fundamental matters,[102] such as the belief in the unicity of God and the prophethood of Muhammad (SAW). Obviously, absent these fundamental beliefs, the Qur'anic message would not carry its proper divine weight.

The Qur'an flatly prohibits behavior which conflicts with fundamental moral principles. For example, it prohibits murder, and more specifically, female infanticide.[103] The gradualist philosophy of change was applied to lesser though quite important matters. The best known example relates to the prohibition against drinking wine in a society which was used to drinking;[104] it was imposed in stages.[105] A less-known example comes from the area of constitutional law.

The Qur'an specified in a few verses only the fundamental constitutional characteristics of an Islamic state, such as *bay'ah* (voting) and *shurah* (deliberation).[106] It left it up to the Islamic societies themselves to flesh out this basic constitutional structure in accordance with their varying levels of social consciousness and political and constitutional maturity. The disparate results are evident across the Muslim world.

But the Qur'an did not recognize only societal variations in levels of consciousness and development, it also recognized individual differences. For this reason, its philosophy of gradual change applied to individuals as well. This is most evident in the area of ethics.

The Qur'an describes various actions and words as "good" and others as "better."[107] This approach recognizes that not all humans are capable of the same understanding or behavior. For example, in the area of criminal law, some Muslims may insist on the rule of "an eye for an eye" in determining the punishment of a criminal. The Qur'an does indeed introduce this standard of justice.[108] But, it continues to say repeatedly, that it is better to forgive, and asks: How could we mortals

---

Constitutionalism, *supra* n. 11, at 9-10. *See also,* Abd al-Hamid Mutawalli, *Al-Islam* 71-72 (Alexandria: Mansha'at al-Ma'arif n.d.).

102. *See supra* n. 101.

103. Qur'an 5:32 (stating that if a person kills another unjustifiably, then it is as if that person murdered all of humanity); 6:151, 17:33 ("And do not take life, which God has made sacred, except by way of justice and law."); 17:31 ("Do not kill your children for fear of poverty."); 81:8 ("God will ask parents in the afterlife: 'for what sin was the female infant buried alive?'").

104. Qur'an 2:219, 4:43, 5:90. *See* short discussion in al-Hibri, *Islamic Constitutionalism*, *supra* n. 11, at 10.

105. *See supra* n. 104.

106. Qur'an 48:18, 48:10, 60:12 (commenting on *bay'as*). Qur'an 3:159, 42:38 (commenting on *shurah*). (For more on this, see article referred to in footnote 94.)

107. Qur'an 7:145, 39:18, 39:55, 46:16.

108. Qur'an 5:45.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

expect forgiveness in the afterlife, when we are so unforgiving in this life?[109] In other words, one could insist on one's right to punish a perpetrator of a crime, but it is better to transcend this mode of thinking, if one can, and forgive. Clearly then, there are various levels of being a good Muslim; some of which are better than others. The better ones tend to require higher consciousness, deeper moral insights, and greater tolerance of human frailty.

In addressing the patriarchal oppression of women and other groups, the Qur'an utilizes the gradualist approach to change in both the societal and individual arenas.

Addressing the Oppression of Women

The Qur'an and the Prophet repeatedly mention slaves and women, exhorting Muslims to treat them well.[110] In his last speech, *Khutbat al-Wadaa'*, the Prophet himself analogized the status of women to that of powerless slaves, beseeching the male audience to treat them kindly.[111] Unfortunately, given their patriarchal blinders, many Muslims perceived such prescriptive statements as sanctioning the underlying social conditions themselves. This fallacious reasoning was uncritically

109. Qur'an 2:178, 4:149, 7:199, 24:22, 42:40. For a discussion of Islamic criminal law and the concept of forgiveness, *see* Azizah Y. al-Hibri, *The Muslim Perspective on the Clergy-Penitent Privilege*, 29 Loy. L.A. L. Rev. 1723-1732, especially 1728-1729 (1996) [hereinafter al-Hibri, *Muslim Perspective*].

110. *See e.g.* Qur'an 49:13, 24:33, 8:70. *See also* Ibn Majah, *supra* n. 89, at vol. 2, 1216-1217 (quoting the Prophet as saying that slaves are "your brothers under your control, feed them of what you eat, dress them of what you wear, and do not charge them with tasks beyond their capabilities. If you do, then help them."). *See infra* n. 111 for *hadiths* relating to women.

111. Sahih al-Bukhari, *supra* n. 87, at vol. 3, 262 (quoting the Prophet as admonishing his male audience: "Let not one of you whip his wife like a slave, then have sexual intercourse with her at the end of the day."); Ibn Hisham, *supra* n. 64, at vol. 4, 604 (quoting the Prophet, in his *Khutbat al-Wadaa'* as saying to men: "Be good to women; for they are powerless captives (*awan*) in your households. You took them in God's trust, and legitimated your sexual relations with the Word of God, so come to your senses people, and hear my words . . . ," also providing the meaning for the word "*'awan'*"); Abu Ja'far al-Tabari, *Jami' al-Bayan fi Tafsir al-Qur'an* vol. 4, 212 (9th Cent. repr., Beirut: Dar al-Ma'rifah 1978) [hereinafter al-Tabari, *Jami' al-Bayan*] (quoting the same passage quoted by Ibn Hisham). This passage comes from *Khutbat al-Wadaa'*, and was also mentioned in Abu Ja'far al-Tabari, *Tarikh al-Tabari* vol. 2, 206 (9th Cent. repr., Beirut: Dar al-Kutub al-'Ilmiyyah 1988) [hereinafter al-Tabari, *Tarikh al-Tabari*]. *See supra* n. 110, regarding a *hadith* on slaves; & *infra* n. 112, for another *hadith* on slaves. The Prophet recognized that the status of women was often no better than that of slaves, a fact which reflected his deep concern for women. Many authors have paired the two categories in their writings. *See e.g.* 'Ala' al-Din al-Kasani, *Kitab Bada'i' al' Sana'i' 'fi Tartib al-Shara'i'* vol. 2, 334 (12th Cent. repr., Beirut: Dar al-Kutub al-'Ilmiyyah 1986) [hereinafter al-Kasani] (stating that a husband is entitled to punish his wife as he does his slave). *See also* al-Hafiz ibn Kathir, *Al-Bidayah wa al-Nihayah* vol. 5, 148, 170, 202 (Maktabat al-Ma'arif, 2d printing of a 14th Cent. repr., Beirut: 1977) [hereinafter ibn Kathir, *Al-Bidayah wa al-Nihayah*].

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

validated by existing social prejudices and resulted in centuries of misinterpretation and oppression. More importantly, it misunderstood and thus misconstrued the basic Qur'anic philosophy of gradualism by perpetrating the *status quo* instead of trying to raise consciousness. So, it took over a thousand years in some Muslim societies to prohibit slavery. We should not wait another thousand years to recognize the rights of women in Islam.

It is important to note, however, that while some Muslim societies and individuals misunderstood the full force of the Qur'anic message, others with a higher level of consciousness did not. For example, while in the past some Muslims kept slaves arguing that slavery must be acceptable since it was referred to in the Qur'an, others understood the ideal of Islam and freed their slaves to gain favor in God's eyes.[112] It is also for this reason that while some Muslims continue to engage in polygamy, many pious male scholars have refused to marry more than one woman for fear of violating God's express Qur'anic warning that polygamous men *will be* guilty of injustice.[113]

Having raised the issue of polygamy, I must now address it, and discuss the Qur'anic verse referring to it. It is a question of major concern for many Muslim women, even in North America. I shall then turn to another issue of concern to our community; namely that of wife abuse.

Polygamy and Its Cultural Entrenchment

The Qur'an was revealed to a culture steeped in polygamy. In *Jahiliyyah*, men married more than a hundred women at a time.[114] It was therefore unrealistic, given human nature, to prohibit polygamous behavior abruptly. The Islamic approach to this situation as in other matters was to limit the practice severely, designate avenues for ending it, and provide a prescription/description of the ideal state of affairs that excludes the practice.

---

112. For a discussion of the Qur'anic view of slavery, *see* Hassan, *supra* n. 14, at vol. 1, 186-192 (explains that the Qur'an recognized slavery only as a transitional condition and that it provided various methods for its elimination; recounts *hadith* that all believers, whether free or enslaved, are siblings, and no Arab is better than a non-Arab except to the extent of the former's piety). A variant of this *hadith* is mentioned in al-Tabari's account of *Khutbat al-Wadaa'* (The farewell speech of the Prophet); *Tarikh Al-Tabari*, *supra* n. 111, at vol. 2, 206. *See also* Qur'an 49:13. Despite this Qur'anic position, slavery was not abolished from all Muslim countries until earlier this century, and only after the international community denounced the practice.

113. Qur'an 4:129.

114. *See* Sa'id al-Afaghani, *Al-Islam wa al-Mar'ah* 21-29 (Damascus: Tarraki Press 1945); al-Hibri, *Islamic History*, in *Women and Islam* 209 (London: Pergamon Press 1982).

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

The Qur'anic statement on polygamy is more complex than some scholars are willing to admit. For example, the permission to marry up to four wives is premised upon the possibility that orphan women may be oppressed.[115] The significance of this condition has been overlooked by many scholars. Yet, it clearly links the permission to marry more than one woman to a specific situation and an obsolete practice which were both in existence at the time of the Prophet. The Qur'an states that if men feared being unjust towards orphans, then these men may marry up to four wives so long as they treat them equitably and fairly.[116] Yet the Qur'an states in the same chapter that it is not possible to be equitable and fair in these situations.[117] Although it is not possible to understand this verse about polygamy in all its complexity without understanding fully the social practice it was revealed to avoid, one thing is nevertheless clear: the Qur'an expressly states that polygamy results in injustice.[118] Consequently, it is not an optimal way of arranging marital relations. For this reason, some pious men abandoned polygamy in the hope of reaching a higher state of marital and human relations, namely the one described in the Qur'an.[119] Others opted for the minimal standard, despite its questionable application to contexts broader than those referred to in the revelation.

Violence Against Women and Its Cultural Entrenchment

Another example of Qur'anic gradualism appears in the verse most often quoted to justify violence against women. It states that: "[a]s to those women on whose part you fear disloyalty and ill conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly)."[120] So, Let us examine this verse next, as well as the circumstances of its revelation.

The *Jahiliyyah* society was a rough desert society, plagued by tribal wars.[121] Many *Jahiliyyah* men beat their wives. They carried this practice into Islam and were so violent that the women complained to the Prophet (SAW) about the situation.[122] Acting on his own, the

115. Qur'an 4:3 (emphasis added).
116. *Id.*
117. Qur'an 4:129.
118. *Id.*
119. I personally know many sheikhs, some of whom are now deceased, who preferred to be monogamous rather than run the risk of being unjust.
120. Qur'an 4:34.
121. Hassan, *supra* n. 14, at vol. 1, 4-8, 52-61.
122. Nasr al-Din al-Baydawi, *Tafsir al-Baydawi* 111 (19th Cent. repr., n.p. Dar al-Fikr 1982) (recounting the story of a woman who came to the Prophet to complain about her abusive

This content downloaded from 71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

Prophet (SAW) prohibited the practice by allowing the wife the right to *qisas* (retribution).[123] That very evening, the men complained loudly.[124] They came to the Prophet and revisited the issue, arguing that his ruling allowed their wives to gain the upper hand.[125]

At that point, the Prophet sought and received a revelation which reflected the Qur'anic philosophy of gradualism. The verse appeared to contradict the Prophet. The Prophet himself stated when he received the revelation that "Muhammad wanted, but God did not want (to order a flat ban on "hitting" one's wife)."[126] As we shall see later, however, the revelation simply changed the approach prescribed by the Prophet for eradicating wife abuse. It did not authorize wife abuse. It only introduced a transitory stage for change, while preserving the Qur'anic view of ideal marital relations.

It is a well-known jurisprudential rule in Islam, that "verses in the Qur'an explain each other," i.e., the Qur'an is an integral whole and thus the full and proper meaning of any verse cannot be understood in isolation from other verses in the rest of the Qur'an.[127] Relying on this fundamental jurisprudential principle and the principle which asserts the thorough internal consistency of the Qur'an, I now turn to a popular verse in the Qur'an that Early Muslim women at times inserted in their marriage contracts.[128] The verse enjoins spouses to "live together in kindness or leave each other charitably." (Qur'an 2:231) Based on this and other verses in the Qur'an, Muslim jurists asserted the principle of prohibition of harm among spouses (*la dharar wala dhirar*).[129] This principle still underlies many provisions in the modern personal status codes in Muslim countries.[130] Additionally, a Muslim woman has the right to take her husband to court or divorce him for abusing her.[131]

---

husband).

123. *Id.* For more on the concept of *qisas*, *see* al-Hibri, *Muslim Perspective, supra* n. 109, at 1727-1730.

124. Al-Tabari, *Jami' al-Bayan, supra* n. 111, at vol. 5, 37; Ibn Majah, *supra* n. 89, at vol. 1, 637.

125. Abu Dawud al-Sajistani al-Azdi, *Sunan Abi Dawud* vol. 2, 252 (9th Cent. repr., Beirut: Dar al-Jil 1988); Ibn Majah, *supra* n. 89, at vol. 1, 637.

126. *Id.*

127. Manna' al-Qattan, *Mabahith fi 'Ulum al-Qur'an* 83-84 (Cairo: Maktabat Wihbah 1981); Badr al-Din al-Zarkashi, *Al-Burhan fi 'Ulum al-Qur'an* vol. 1, 35-50 (15th Cent. repr., Beirut: Dar al-Jil 1988).

128. Al-Tabari, *supra* n. 111, at vol. 4, 215.

129. Zaidan, *supra* n. 48, at vol. 7, 234-235.

130. *See* al-Hibri, *Islam, supra* n. 13, at 13 (especially footnotes 58, 59 & related text).

131. *Id. See also* Hassan Hassan Mansour, *Al-Muhit fi Sharh Masa'il al-Ahwal al-Shakhsiyyah* 213, 214 (Alexandria: al-Mu'assasah al-Wataniyyah li al-Tiba'ah wa al-Nashr wa al-Tawzi' 1998), Ahmad Ghandour, *Al-Ahwal al-Shakhsijyah fi al-Tashri' al Islami at 234* (Kuwait: Jami'at al-Kuwait Press 1972).

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

The Prophet himself denounced repeatedly spousal abuse. On one occasion, he asked "How can one of you hit his wife like an animal, then he may embrace her?"[132] On another, he asked: "How can one of you whip his wife like a slave, and he is likely to sleep with her at the end of the day?"[133]

The Prophet (SAW) also echoed various Qur'anic descriptions of ideal marital relations, he told the men: "The best among you, are those who are best towards their wives."[134] He added, "and I am the best among you in that respect."[135] This statement is significant given the emphasis Muslims place on emulating the Prophet. He was gentle and kind to his wives and never raised his hand against any of them.[136] He cut meat, took care of children, and sewed his shoes.[137] Yet many Muslim men today forget these important Prophetic statements and examples, and limit their emulation of the Prophet to the style of his dress or his grooming habits.

How do we reconcile all these facts, Qur'anic and prophetic, with the single Qur'anic verse that permits husbands to "hit" their wives? How do we reconcile the verse with the Prophet's continued insistence that husbands abstain from beating their wives? We do that by developing our insights further to gain a deeper understanding of Qur'anic meaning. This is not a quick process. In this case, I shall take a few steps along this road to illustrate my point.

THE PHILOSOPHY OF GRADUALISM AND VIOLENCE AGAINST WOMEN

This is how the philosophy of gradualism was used in the context of wife abuse. First, the Qur'an imposed on the husband various limitations before he was permitted to resort to "hitting." He was required first to communicate with his wife. The man must advise his wife about what he thinks she did wrong. This step gives the wife the chance to respond and explain. If the misunderstanding is not resolved by communication, and the husband remains angry, he can separate himself physically from his wife for a while.

---

132. Sahih al-Bukhari, *supra* n. 87, v. 4 at 57.

133. Ibn Majah, *supra* n. 89, at vol. 1, 638.

134. Ahmad Fa'ez, *Dustur al-Usra fi Thilal al-Qur'an* 161 (Beirut: Mu'assasat al-Risalah 1982) [hereinafter Fa'ez]; Ibn Majah, *supra* n. 89, at vol. 1, 637.

135. *See supra* n. 134.

136. Ibn Majah, *supra* n. 89, at vol. 1, 637.

137. Al-Ghazali, *supra* n. 33, at vol. 2, 354. *See also* Abu al-Hassan al-Nadawi, *Al-Sirah al-Nabawiyyah* 370 (Jeddah: Dar al-Shuruq 1977).

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

Many jurists viewed these steps as directed against the wife, first to "admonish" her, then to make her "suffer from sexual abandonment."[138] Clearly, they missed the fundamental point. These prescribed stages are steps in anger management for an aggressive patriarchal male who is likely to use force as a first resort.

Second, the Qur'an totally excludes righteous women from the scope of "hitting."[139] It limits the possibility of "hitting" one's wife to extreme cases in which *nushuz* is feared by the husband.[140] According to major jurists, *nushuz* is a word that in the context of the verse appears to refer to disloyalty towards the husband, dislike, disobedience, or discord.[141] This is a questionable interpretation, because the Prophet himself appears to have interpreted the word "*nushuz*" differently in his *Khutbat al-Wadaa'*. According to various reports, the Prophet stated in that address, "You [men] have rights against women, and they have rights against you. It is your right that they do not bring someone you dislike into your bed, or that they commit clear adultery (*fahishah mubayyinah*). If they do, then God has permitted you to desert them in bed, and [then] hit them lightly. If they stop, you are obliged to maintain them."[142] Unfortunately, some jurists have interpreted the word *fahishah mubayyanah* broadly to include disobeying one's husband in less significant matters.[143] Others, however, have maintained that it is simply adultery.[144] We now turn to discuss this matter further,

---

138. Muhammad al-Dusuqi, *Al-Usrah fi al-Tashri' al-Islami* 164 (Doha: Dar al-Thaqafah 1995); Abu Zahrah, *al-Ahwal*, *supra* n. 29, at 163; Zaidan, *supra* n. 48, at vol. 7, 313-314.

139. Qur'an 4:34.

140. *Id.*

141. *See e.g.* Fa'ez, *supra* n. 134, at 157; al-Tabari, *Jami' al-Bayan*, *supra* n. 111, at 40. *See also infra* n. 142.

142. Ibn Kathir, *Al-Bidayah wa al-Nihayah*, *supra* n. 111, at vol. 5, 148; al-Tabari, *Tarikh al-Tabari*, *supra* n. 111, at vol. 2, 206. Other reports, even by al-Tabari and Ibn Kathir themselves add the element of "disobedience" to the concept of *nushuz*, as presented by the Prophet in his last address. *See supra* n. 111. *See also* Abu Zakaryyah al-Nawawi, *Rawdat al-Talibin* vol. 5, 177 (13th Cent. repr., Beirut: Dar al-Kutub al-'Ilmiyyah 1992) [hereinafter al-Nawawi] (arguing that *nushuz* includes leaving the marital home without permission (but not for verbal abuse), abstaining from sexual enjoyment, refusal to cohabit).

143. *See e.g.* Ibn Kathir, *Al-Bidayah wa al-Nihayah*, *supra* n. 111, at vol. 5, 202-203; al-Tabari, *Jami' al-Bayan*, *supra* n. 111, v. 4 at 212. These variations are the result of independent reporting of the address by various parties. The Qur'an does require the husband to stop "hitting the wife when she obeys," but her obedience is not directed to the husband *per se*. Rather, it is a response to his admonishment (*wa'th*) that she shun adulterous behavior, a major sin in Islam. Qur'an 4:34.

144. *See e.g.* Ibn Manthur, *Lisan al-'Arab* vol. 10, 192 (2d printing of a 13th Cent. repr., Beirut: Dar Ihya' al-Turath al-'Arabi 1992) (quoting Ibn al-Athir as defining *fahishah mubayyinah*, occurring in the Prophet's last address, as adultery; also stating that others define it as extreme sin and as leaving the marital home without permission); Muhammad Murtadha al-Zabidi, *Taj al-'Arus* vol. 4, 331 (18th Cent. repr., Beirut: Manshurat Dar Maktabat al-Hayat n.d.)

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

before answering the last question in this discussion, namely "what is hitting?"

Many jurists living in patriarchal cultures broadened the definition of *fahishah mubayyanah* significantly.[145] By broadening this definition, they broadened the scope of instances in which the husband may resort to "hitting." This is against the letter and spirit of the Qur'an which states that husbands should live with their wives in kindness or leave them charitably.[146] Nevertheless, even if we were to accept the broader definition of *fahishah mubayyinah*, the man still cannot "hit" his wife as a first resort; on this fact major scholars agree.[147] He is required to take several steps before resorting to "hitting."[148] If all these steps fail, then the husband may fall back on his original approach of "hitting" his wife.

The Qur'anic Concept of "hitting."

But what does "hitting" mean in this case? Many scholars have pondered over the Qur'anic permission to "hit" one's wife, and its attendant circumstances. Given their deep belief in Islamic justice, they realized that they must look deeper into the Qur'an for a better understanding of this verse. So, they have interpreted this passage, as they should, in light of the basic principles governing marital relations as articulated by the Qur'an and the Prophet.[149] This approach forced them to modify their common understanding of the act of marital "hitting." As a result, these jurists issued a series of limitations redefining the act of "hitting" itself.[150] For example, the man may not

(quoting al-Jawhari and Ibn al-Athir as defining *fahishah mubayyinah* as adultery. Also stating that others defined it as extreme sin, and that al-Shafi'i defined it as verbal abuse towards the wife's in-laws).

145. *See supra* n. 141.

146. Qur'an 2:229.

147. *See e.g.* al-Kasani, *supra* n. 111, at 334 (the conjunction "and" in the revelation requires a sequence of actions: first admonishing the wife, then deserting her bed, and finally "hitting" her); Wihbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh* vol. 9, 6855-6857 (Damascus: Dar al-Fikr 1997) [hereinafter al-Zuhayli]. *Cf.* al-Nawawi, *supra* n. 128, at 177 (quoting al-Hinati who argues that the sequential interpretation is only one of three possible ones).

148. The majority of scholars take the sequential approach. According to them, the husband must first admonish, then desert his wife's bed, and finally resort to hitting, although some argue that it is better not to reach the third stage at all. *See* text accompanying *supra* n. 138 about the sequential approach. Al-Zuhayli, *supra* n. 147, at vol. 9, 6857 argues that it is better to threaten without actually "hitting." He bases his view on the fact that the Prophet never hit a woman.

149. Major among these is the Qur'anic verse which orders husbands to live with their wives in kindness, or leave them charitably. Qur'an 2:229. For more, *see supra* nn. 66-68 & related text. For *hadith, see also supra* nn. 121, 122, 133 & related text.

150. Among these is the sequential interpretation of the Qur'anic verse 4:34. *See supra* n. 147. Other limitations are mentioned in al-Tabari, *Jami' al-Bayan*, *supra* n. 111, at vol. 5, 43-45 (the man may not hit the woman in the face, or hit hard or leave an (harmful) effect (*dharb ghayr*

This content downloaded from 71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

hit his wife on the face.[151] Furthermore, any "hitting" which is injurious or leaves a mark on the woman's body is actionable as a criminal offense.[152] Furthermore, if the husband reaches that unfortunate stage of "hitting," he may hit the wife only with something as gentle as a *miswak* (a soft small fibrous twig used as a toothbrush in the Arab Peninsula).[153] Finally, given the Qur'anic ideal of marital relations, scholars concluded that a woman abused physically or verbally is entitled to divorce from her husband.[154] They lowered the bar significantly on what counts as abuse. This position was developed in ancient Arabia, over fourteen hundred years ago when the world viewed beating one's wife as a right. Today, we can transcend the earlier stages of human interaction and insist on the achievable Islamic marital ideal of tranquility, affection, and mercy.

The Story of Job

An important Qur'anic precedent on the issue of domestic violence is found in the story of Job.[155] When Job was being tested, his wife lost her faith and blasphemed.[156] As a result, he took an oath to strike her as punishment.[157] A dilemma was thus created: a Prophet should not engage in such violent and unworthy behavior. In addition, a Prophet may not violate his oath. The divine solution to this dilemma is

mubrah wala mu'ath.thir); al-Nawawi, *supra* n. 142, at vol. 5, 676-677 (Hitting may not cause harm or be heavy, cannot be on the face or other vulnerable areas. If it causes harm, the woman is entitled to damages.); al-Zuhayli, *supra* n. 147, v. 9 at 6856-6857 (citing medieval jurists as requiring that the "hitting" does not cause fear in the wife, is not directed against the face or abdomen, and other places that could result in serious harm).

151. *See supra* n. 150.

152. Abu al-Barakat Ahmad al-Dardir, *al-Sharh al-Saghir* vol. 2, 512 (18th Cent. repr., Dar al-Ma'aref 1972) (noting that the hitting may not affect the wife's bones or flesh. The husband may not resort to hitting his wife if he knows that it would be useless. If the husband hits his wife despite this knowledge, she is entitled to divorce and retribution). *See also* al-Nawawi, *supra* n. 142, at vol. 5, 676-677 (hitting may not cause harm or be heavy, cannot be on the face or other vulnerable areas. If it causes harm, the woman is entitled to damages); al-Zuhaili, *supra* n. 147, v. 4 at 6856-6857 (noting that the Hanafi and Shafi'i schools of thought would find the husband liable if he harmed his wife. Hanbalis would not.)

153. Al-Tabari, *Jami' al-Bayan*, *supra* n. 111, at vol. 4, 44; Al-Nawawi, *supra* n. 142, at vol. 5, 676-677 (hitting may not cause harm or be heavy, cannot be on the face or other vulnerable areas. If it causes harm, the woman is entitled to damages); al-Zuhayli, *supra* n. 147, v. 4 at 6856.

154. This view has been adopted by some personal status codes such as Jordanian Code ch. 12 art. 132, *supra* n. 89; Kuwaiti Code pt. 1, bk. 1, tit. 3, ch. 1, art. 126, *supra* n. 89.

155. Qur'an 38:44. I would like to thank Sana' Afandi, director, *Karamah: Muslim Women Lawyers for Human Rights*, for pointing out the significance of this story in understanding the Qur'anic verse 4:34. I also thank my spouse Ahmad al-Haidar for shedding valuable light on the significance of the graduated approach in the same verse.

156. *Id.*

157. *Id.*

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

expressed in a Qur'anic verse. It instructs the Prophet to satisfy his oath to discipline his wife by "striking" her with a handful of grass (or basil).[158] The intent of this instruction was to satisfy the promise without harming the wife. In this way, Prophet Job resolved his dilemma. The Qur'anic resolution of Job's dilemma offers Muslim men a way to vent their frustrations which is consistent with *all* of the Qur'anic verses as well as the Prophetic tradition.

To summarize, the Qur'anic approach to the problem of wife abuse is two-pronged: first, it provides a harmonious view of marital relationships based on tranquility, affection and mercy. These relations are in turn based on a view of humanity that is characterized by mutual respect, equality and dignity. Second, it develops a graduated approach to the problem of wife abuse, which is aimed at cabinning the aggressive instincts of the patriarchal male, and re-channeling his anger into more productive, or less destructive, outlets. In doing so, the Qur'an takes into account the very nature of human beings and the need for "a gestation period" for them to achieve a higher stage of development and communication.

It is worth noting at this point that some jurists have already concluded in light of the totality of the Qur'anic revelation, that it is better for a man not to reach the last stage of "hitting" at all.[159] If conflict persists, another Qur'anic verse prescribes mediation.[160] If that also fails, then the parties should leave each other "charitably."

CONCLUSION

In the United States and Canada, there is a sincere attempt to overcome many deeply rooted prejudices and harmful behavioral patterns, including wife abuse which has been criminalized. American and Canadian Muslims who are part of these societies have a historical opportunity to live up to the highest standards of Islam, to be the best Muslims they can be. Given our level of social consciousness and development, we have no excuse to continue abiding by standards more suitable to those of *Jahiliyyah* or other highly patriarchal cultures. That

158. The word "*dighth*" in Qur'anic verse 38:44 means a handful of grass or even basil. *See* Ibn 'Abdin, *Radd al-Muhtar* vol. 5, 659 (19th Cent., repr., Beirut: Dar al-Kutub al-'Ilmiyyah 1994) (explaining the meaning of "*dighth*" as a handful of basil, also noting that others stated that it meant "a handful of grass or thin branches"). *Cf.* Ibn 'Abdin argues that the use of basil by Job is a special case, reflecting God's mercy, and cannot be generalized to other women. Yet major medieval scholars appear to implicitly disagree. They limited the husband to the use of a *miswak* or what is similar to it.

159. *See* n. 148.

160. Qur'an 4:35.

This content downloaded from 71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms

time is gone hopefully forever. Furthermore, we have a duty towards the rest of the Muslim *ummah* (community) to lead by example. If we do that successfully, other Muslims in other countries, male and female, may be moved by our insights into a faster "gestation period" to reach the Qur'anic ideal of marital relations.

This content downloaded from
71.163.37.241 on Sun, 13 Jul 2025 19:05:22 UTC
All use subject to https://about.jstor.org/terms